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# Testimony of Meredith McGehee

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## Before the Special Task Force on Ethics

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MR. CHAIRMAN, Members of the Task Force, thank you for this opportunity to provide our views on the House ethics process. My name is Meredith McGehee and I am the Policy Director of the Campaign Legal Center. The Legal Center is a nonpartisan, nonprofit organization founded in 2002 which works in the areas of campaign finance and elections, political communication and government ethics. The Legal Center offers nonpartisan analyses of issues and represents the public interest in administrative, legislative and legal proceedings.

The Legal Center also participates in generating and shaping our nation's policy debate about money in politics, disclosure, political advertising, and enforcement issues before the Congress, the Federal Communications Commission (FCC), Federal Election Commission (FEC) and the Internal Revenue Service (IRS). The Legal Center's main funders are The Pew Charitable Trusts, the Joyce Foundation, the Stuart Family Foundation, The Carnegie Corporation of New York, and the JEHT Foundation. Our President is Trevor Potter, former Chair of the Federal Election Commission, and our Executive Director is Gerry Hebert, former acting head of the Voting Section of the Civil Rights Division at the Department of Justice.

Prior to joining the Legal Center, I was President of the Alliance for Better Campaigns and before that, I was Senior Vice President and Chief Lobbyist for Common Cause where I worked for 15 years. I also worked for six years on Capitol Hill as a Legislative Aide and Legislative Director on the House side.

Shortly after the 110$^{th}$ Congress convened in January, the U.S. House of Representatives passed legislation to make significant strengthening changes in its ethics rules. These changes included banning gifts from lobbyists, tightening the rules governing privately financed travel and placing new restrictions and transparency on earmarks. The Senate also acted on legislation (S. 1) to strengthen its ethics rules and lobbying disclosure laws, but since these changes are included in a bill that proposes modifications of current statutes (and not just internal rules), they have yet to go into effect in the Senate.

The Legal Center, along with other nonpartisan organizations, applauded these rules changes. While not perfect and still in need of some fine-tuning, we believe that the new rules were more than a step in the right direction. They were substantive, overdue reforms that will hopefully continue a process of ensuring that government remains more responsive to voters than to interests that are able to gain access and influence through meals, trips and other financial favors. Of course, it should go without saying that these changes did not reach into the area of campaign finance where much work remains to be done in order to create a better system. But that should not devalue the worth of addressing these ethics rules.

One vitally important ethics issue, however, that was not addressed in the House-passed rules was the subject of enforcement. Instead, Speaker Nancy Pelosi (D-CA) appointed this bipartisan Task Force to look into whether changes should be made in the existing House ethics process, including whether the House should "create an outside enforcement entity, based on examples in state legislatures and private entities." The Task Force was given a deadline of May 1 to report its recommendations.

Mr. Chairman, I especially want to commend you for deciding to hold this public hearing. Public hearings are an important means of educating both the public and Members, and I am hopeful that this hearing will serve that purpose. I also want to thank the members of this Task Force for the chance to meet informally and note that a range of experts, representatives of organizations and individuals with interest in these matters were also brought in to meet with Task Force members. From these meetings, you have had the chance to hear a wide variety of views on this important subject.

I strongly urge this Task Force to recommend fundamental changes to the current congressional ethics enforcement process. Should this Task Force follow its predecessors and fail to do so, the result will be the proverbial re-arranging of the deck chairs on the Titanic.

## Problems with the Current System of Enforcement

Reforming the congressional ethics enforcement process is perhaps the most crucial component of lobbying and ethics reform in the 110th Congress. The new, stronger lobbying laws and ethics rules will not have meaningful impact without proper enforcement. It is this critical step, however, that both the House and Senate seem most reluctant to take—a reluctance that often appears to be based more on fear than on reason.

Both the House of Representatives and the Senate are constitutionally charged in Article I, §5, cl.2 of the U.S. Constitution with the responsibility to "determine the Rules of its Proceedings [and] punish its Members for disorderly Behavior." The fact that Congress is constitutionally responsible for disciplining its Members is routinely used as an excuse for keeping any sort of independent voice out of the ethics process. However, as Harvard Professor and congressional ethics expert Dennis Thompson stated in a January 17, 2007 *Roll Call* opinion piece, "Refusing to delegate some of the authority

actually is irresponsible. It reveals a failure to face up to the fundamental conflict of interest in any process that has Members acting as prosecutor, judge and jury in cases involving their own colleagues."

For those on the Task Force who do not see a problem with the current congressional ethics enforcement process, there is probably little I can say that will change your mind. Pointing out the polls that show dismay over the scandals and corruption in Congress is likely to do little to change your viewpoint. Finding numerous editorials in newspapers around the country which call the system a joke is also unlikely to move you. Reciting a litany of wrist-slaps doled out by the Committee in lieu of more meaningful punishment or bemoaning delays and inaction by the Committee to run out the clock on cases, hoping they will go away or lose jurisdiction, is also unlikely to persuade you there is a problem.

But the current House leadership does not share the viewpoint of such Task Force members, nor do the majority of the freshmen class, many of whom made ethics a centerpiece of their campaigns.

The current congressional ethics enforcement system has lost its public credibility and is not serving to protect the integrity of the House as an institution. Indeed, the firing of two Committee members who dared to take any action—however, mild—against a powerful Member of their own party has served to undermine the integrity of the institution. The process has lost its credibility when two members of the Ethics Committee contributed to the legal defense fund of a Member under investigation by the Committee and yet did not recuse themselves from an investigation of that same Member.

There are instances when the congressional ethics enforcement system has "worked"—meaning that Members were held to account for ethical misbehavior. Of course, no prosecution is perfect, but at least there were meaningful punitive actions taken. This line of cases include former Speaker Jim Wright (D-TX), former Rep. Gerry Studds (D-MA), former Speaker Newt Gingrich (R-GA) and in the Senate, the Keating Five and Senators Bob Packwood (R-OR) and Dave Durenberger (R-MN). Notably, most of these cases involved the Committee's reliance on an outside counsel.

But unfortunately these cases are the exceptions. All too often, no public action is taken or the action taken was so weak that it is dismissed by the violator as inconsequential. Many times, the Committee appears to be hoping that the alleged violator will leave office and deprive the Committee of jurisdiction.

Not only is the current system failing the public, it is also failing Members and staff. More often than not, a finding by the Ethics Committee is readily (and often appropriately) dismissed as simply the "club" taking care of its own or the party in power protecting its power. This sense has been exacerbated in recent years as the seven-year "ethics truce" was replaced by a partisan meltdown in which Committee members who acted against a powerful Member of Congress were removed from the Ethics Committee

and the Committee itself ceased to function when the Chairman and Ranking Member could not agree on staff hiring.

A Task Force recommendation that keeps the current structure in place will be a disservice to the Members of the House and their staffs. It will leave them in a no-win situation. Members whom the Committee clears of wrongdoing still find public suspicion about the verdict because the Committee has so little credibility. This leaves hanging the question public officials and others in the public spotlight dread having to face, "Which office to go to to get my reputation back?"

More importantly, a Task Force recommendation that fails to make fundamental changes in the current system will disserve the American people who, for the health of our democracy, need to believe in the integrity of their government.

## Reform Red Herrings

As important as strong and effective ethics rules are, rules alone are not enough to create an atmosphere in which acting to meet high ethical standards is the norm. Without effective ethics enforcement and oversight, lowest-common-denominator ethics are allowed to set the standards for the institution, the credibility of congressional decisions is diminished, and the moral authority of Congress is undermined.

Perhaps the most serious concern is that the Task Force, in order to reach bipartisan agreement, will come forward with recommendations that are small-bore and overdue but which fail to address the underlying cause of the system's repeated failures. These "reform red herrings" fail to address the fundamental problems at the core of the system.

*Red Herring #1: Change the Members serving on the Committee*

There are those who believe the problems in the current system will be cured simply by putting in "better" Members—Members who understand and appreciate comity and show a moral fortitude that has been lacking.

This is a misdiagnosis of the problems plaguing the ethics system—problems that have repeatedly been investigated and studied by task forces and committees every handful of years. While there may have been instances where the caliber of Members serving on the Committee was not particularly high, most Members, in my view, believe they have served with a seriousness of purpose and sense of fairness. They are not in a position to judge fairly their own conduct in these situations. Yet, the process itself is still broken.

On the other hand, there are Members who are dubious about the whole enterprise of ethics reform, as expressed by former Representative Bill Thomas' (R-CA) comments filed during the 1997 review: "For it is rarely the ordinary citizen who engages directly in the intricacies of [the Ethics] Committee. Rather, it is more often political insiders

who seek to use the standards process to regain through the inside-the-beltway tactics what they could not win at the ballot box."

*Red Herring #2: Allow the filing of outside complaints*

Some have suggested that returning to a process that allows outside complaints to be filed will solve a variety of ills in both the practice and perception of the ethics committee.

For most of the House Ethics Committee's history, outside groups and individuals were allowed to file complaints alleging violations of House ethics rules. In reaction to the scandals engulfing two former Speakers, Jim Wright (D-TX) and Newt Gingrich (R-GA), a 1997 House Task Force headed by former Representatives Bob Livingston (R-LA) (who was later to resign from the House not long after being named Speaker-designate because of personal improprieties) and now-Senator Ben Cardin (D-MD), recommended that only Members be allowed to file complaints. Previously outside groups that wanted to file allegations of ethical wrongdoing were required to show that three Members refused to forward the complaint.

The ban on complaints by outside groups—originally mischaracterized as "opening up" the system—is misguided and should be reversed. Fears that the House will be inundated with outside complaints are overblown. Outside complaints should receive an initial investigation in a timely manner, but should also be banned 60 days before an election. Complainants who file frivolous complaints should be banned from filing further complaints for a significant period of time.

The most important power within the Ethics Committee's jurisdiction is the power to initiate an inquiry based on information of which the Committee becomes aware, regardless of the source. This is the system used by the Senate. Throughout the Committee's history, information from outside sources, in the form of letters written to the Committee urging it to launch an investigation and public pressure, have provided by far the most powerful impetus for launching investigations. A surfeit of outside complaints, when they were allowed, was simply not a problem.

The ban on outside complaints, although it should be eliminated, is far from what truly ails the ethics process.

*Red Herring #3: Increase transparency in the ethics process*

Yet another fiction offered by those who are reluctant to clean up the process, is that increased transparency would restore the credibility and efficiency of the process.

There is little doubt that the "black hole" that characterizes the current ethics process, while intended to "protect" Members, mostly serves to undermine the process' public credibility. While there are certainly times in any ethics inquiry or investigation when secrecy is warranted, the current system has gone overboard. There is little

accountability in the ethics process, giving the appearance that the ethics committee is where allegations of wrongdoing go to die a quiet death. The overall impression of the current process is that the Committee is mired in fierce partisanship. Then, when the partisanship dies down, it reverts to being more interested in protecting the "old boys' club" of Members than in leading the effort to create a healthy ethical environment.

Additional transparency would be a positive development for the process. However, if the result is that the Committee issues reports with redacted names, it is not worth the trouble. Increased transparency is laudable but will not solve the underlying problems in the current process.

*Red Herring #4: Bring in former Members to serve as an "outside" element in the ethics process*

There is a strong school of thought in the House that only former Members can know what it's really like to serve in the House. According to this view, non-Members can never really know what it is like to have your every action questioned, to live under the partisan microscope and to make decisions about policy in a hyper-charged political atmosphere. Therefore, if there is going to be an increased outside presence in the ethics process, it should be former Members who "understand" what being a Representative entails.

The central error in this approach is that it fails to deal with one of the main problems plaguing the current ethics process: the well-deserved perception that the "old boys' club" mentality persists. Using former Members potentially brings more partisanship into the process, when less is needed, and does little to address the public perception that the Committee is more interested in protecting their own than in ensuring that ethics rules and standards are appropriately enforced. In addition, many former Members have potential conflicts of interest in their post-congressional careers. If there is a role for former Members, it should be a minority voice, as part of a larger panel or commission.

*Red Herring #5: Create a "jury" system or "random pool" made up of Members*

Another proposed approach is to institute a jury system in which each party caucus would conduct a random drawing for Members to serve on an investigatory panel with a fixed date for a report. One of the motivations for this idea is to share the "burden" of serving on the ethics committee and to provide increased opportunities for every Member to become more knowledgeable about House ethics rules.

This approach will invariably result in the empanelling of some Members who do not have the temperament or training for this type of work and will also produce inconsistency as the pool changes. And once again, it does nothing to address fundamental structural problems or to improve the public credibility of the process.

*Red Herring #6: Rely on the justice system and the courts*

There are those who argue that the Department of Justice is doing just fine in rooting out the problem cases and exposing them to voters. Former Representatives Duke Cunningham (R-CA) and Bob Ney (R-CA) are in jail. Numerous other Members who were linked to questionable behavior lost their election or decided not to run. Accordingly, some argue there is no problem and no need to strengthen the ethics process when the Department of Justice is showing that it is capable of weeding out unethical behavior.

There are many who confuse criminality and unethical behavior. These are two very different standards. As Harvard Professor Dennis Thompson has put it, "[T]he ethics process seeks to determine whether a member's conduct has harmed the institution; the criminal process judges whether a citizen has harmed society."

The goal of the House should be higher than simply to consist of the unindicted. The congressional ethics process by definition should focus on setting higher standards of conduct than simple compliance with criminal law. If a Member's actions reach the level of criminality, the criminal justice system is the appropriate means to deal with the matter. And if the Department of Justice requests that a congressional inquiry be postponed while it investigates potential criminal behavior, that request certainly makes sense and should be respected. But the congressional ethics process should be used to address those behaviors and actions undertaken by Members of Congress which are not criminal but fail to meet the standards of ethical propriety, the congressional ethics process should engage.

A properly functioning congressional ethics process will create the environment which helps ensure that Members and staff stay within ethical bounds. As the Ethics Resource Center, an 85-year-old nonprofit, notes in its work in assisting the corporate world, successful corporations that avoid ethical entanglement do so by committing to creating an ethical climate or culture that cultivates integrity and compliance among its workforce. While the Ethics Committee's advisory and compliance programs are weak, it has particularly failed in its responsibility to foster an ethical culture. Instead, staff members of the ethics committee, according to interviews conducted by Professor Thompson, are "often told not to be so hard on members and to tell them 'how to do what they want to do.' The kind of common law that develops under conditions of confidentiality, one staffer said, is 'parochial and permissive'."

Former Congressman Bob Ney's comments upon leaving office are particularly revealing of this phenomenon, "I never intended my career in public service to end this way, and I am ashamed that it has. I never acted to enrich myself or get things I shouldn't, but over time, *I allowed myself to get too comfortable with the way things have been done in Washington, D.C. for too long."* (Emphasis added.)

A complicating factor in creating an ethical culture in Congress is that elective politics often rewards those politicians who are on the cutting edge of political tactics. New ways to raise money, to gain an edge, to get your message out—all of these are part

of the modern political campaign and often occupy the gray area for years before some become standard practice. But some of these tactics fail to measure up or are determined to stretch the bounds of ethical propriety. Whether or not they break criminal laws, they do compromise the integrity of the institution, and the public perception of that integrity. Leaving the problem to the criminal courts alone will not address those important problems.

And of course, there are always those elements which can surface whenever the human race is involved—greed, the accumulation of power, and moral turpitude.

*Red Herring #7: Increase disclosure and let the voters decide*

Another school of thought believes that the congressional ethics process is over-emphasized because, unlike other professionals, politicians get a verdict on their actions and behavior every two years in the form of elections. Those elections are the ultimate judgment of the behavior of a Member or his or her staff. Often this approach is accompanied by a call for increased disclosure, based on the notion that there is a problem with the system only if voters are not well enough informed to make good decisions at the voting booth.

Disclosure is important, but meaningful disclosure can be hard to legislate. Parsing through financial disclosure statements and campaign finance reports requires an expertise of its own. And all one has to do is look at the fight occurring right now over the disclosure of lobbyists' efforts to influence Congress to recognize that this approach has its own limitations.

Elections are probably better at dealing with ethical improprieties that involve personal moral failings such as personal enrichment (Rep. Cunningham) or moral turpitude (Rep. Foley) than with what Professor Thompson calls "offenses involving institutional corruption."

Elections are an imperfect remedy for another reason as well. The ethical standards of the House are of *national* interest, and affect all citizens. That interest is not adequately safeguarded by the voters in a single district, who may re-elect their Member for parochial reasons, in disregard of the unethical behavior of that Member. While it may be the right of those voters to make that choice, it cannot be said that their decision is an adequate means to enforce the standards of conduct for the House as a whole, or to protect the interest that all citizens have in the House adhering and enforcing those standards.

The Constitution itself recognizes that the power at the ballot box is not sufficient to protect the integrity of the institution. The power invested in the House by the Constitution is explicitly intended to ensure that, even in a democracy, the integrity of the institution itself is more important than the election of any one Member. The House ethics process is the key to protecting and upholding that integrity.

*Red Herring #8: Rely more on outside counsel*

Another option for change is to increase the use of outside counsel. One could argue that such an approach would obviate the need for an Office of Public Integrity or outside Commission. More than a dozen counsels have been brought in for congressional ethics investigations since 1978. Many of these counsels have possessed a level of professional experience not resident in the Ethics Committee or its staff.

Again, increasing the use of outside counsel, especially in the current construct, would be a positive step and has in the past been critical to the conduct and credibility of an ethics investigation. Indeed, the Senate tradition includes a presumption for hiring an outside counsel for major investigations. If the current system is left unchanged, then the House should follow the lead of the Senate and adopt such a presumption for the hiring of outside counsel for investigations.

But such an approach has its limits. First, just taking the step to hire an outside counsel can become controversial and, in its worst light, can be taken as an implication of the individual's guilt. After all, an outside counsel would not be needed if there was no evidence of impropriety. Second, the individual hired as outside counsel can become the subject of controversy, from concerns about potential conflicts or appropriateness or, as in the case of Richard Phelan who investigated former Speaker Wright (D-TX), for the perceived grandstanding and ambitions to "make a name" for himself. (Mr. Phelan went on to run for public office in Illinois; he lost.) Third, the outside counsel may have his or her hands tied by an Ethics Committee which unduly constrains the counsel's investigation and proves unwilling to allow the counsel to pursue relevant leads of misconduct. Or, the opposite can occur, and a counsel can become "rogue." Certainly many Members look at the example of Ken Starr's Whitewater investigation and conclude he far exceeded his original investigative mandate.

## Solutions

The problems with the current system can not be patched over with the changes noted above. Central to any effort to strengthen the current process is inserting a significantly more independent voice in the process.

The Campaign Legal Center supports the establishment of an Office of Public Integrity (OPI) to receive complaints and conduct investigations. The OPI, headed by a Director, would present cases to the House Ethics Committee for the Committee to determine whether ethics rules have been violated and what sanctions, if any, should be imposed on Members. The OPI would also have the power to dismiss frivolous complaints. The Ethics Committee will ultimately be responsible for disciplining Members but the OPI would introduce an important element of independence to ethics investigations.

An independent ethics commission has also been proposed as a way to give the House ethics process more credibility. Like the OPI, the goal of this approach is to mitigate the in-house conflict of interest Members face and repair the dysfunctional House ethics process. Those who favor a commission argue that an outside commission has the necessary independence from Congress to make publicly credible findings and that there are a number of states that have used this model with success. The most commonly touted examples are Kentucky and Florida, both of which have established independent commissions. U.S. PIRG recently published a report which found that 23 states have created commissions, boards or offices that "operate largely free of partisan interference to oversee the ethics rules that apply to elected officials (see *Honest Enforcement: What Congress Can Learn from Independent State Ethics* Commissions).

The Legal Center recommends the OPI model over the commission model for several reasons, though either is highly preferable to the current system. First, some commission structures when applied to Congress raise constitutional questions. While a commission can be designed to avoid this potential problem, a commission which has the power to invoke sanctions is likely to run afoul of the Constitution which reserves this power to the Congress itself. An office within the legislative branch that investigates potential cases and presents those cases to an ethics committee faces no such constitutional impediments. Second, a commission that is too large dilutes accountability and can create a horse-trading dynamic in which commission members find incentives to make deals in order to win the needed number of votes for action. While this approach works for some government institutions, it can create an appearance of deal-making which undermines public confidence in the final outcome.

For these and other reasons the Legal Center believes the approach taken in the legislation introduced by Task Force member Marty Meehan (D-MA), H.R. 422, is the best approach. The bill incorporates the essential elements, as identified by the Legal Center, Common Cause, Democracy 21, League of Women Voters, Public Citizen and U.S. PIRG, that are needed to reform the current discredited congressional ethics enforcement process.

The OPI should be provided with the authority to present a case to the House Ethics Committee for its decision, based on the same standard that is currently used to determine when a case should be presented to the Committee. The Ethics Committee itself, and not the OPI, would be responsible for determining if ethics rules have been violated and what sanctions, if any, should be imposed or recommended to the House. The OPI should have the authority to recommend sanctions to the Committee, if the Committee determines an ethics violation had occurred. In short, the OPI would serve something like the District Attorney and the Ethics Committee would serve as the judge and jury.

The Meehan bill proposes an office headed by a Director chosen jointly by the Speaker and Minority Leader and staffed by impartial professionals who have the resources necessary to carry out the OPI's responsibilities.

The single administrator model proposed by the Meehan bill is used by the Office of Government Ethics (OGE) and has the benefit of increasing accountability and the ability to speak strongly with one voice. However, discussions with Members make clear that they are fearful that such a structure would create an ethics czar along the lines of a Ken Starr who would be too overzealous or create his or her own power base. It is notable, however, that this has not happened at OGE, largely because the individual appointed requires Senate confirmation. We note as well that the opposite reaction is also possible, where the administrator begins to overly identify with the Congress he or she is supposed to investigate, and becomes co-opted.

Therefore, one possible change in the Meehan approach is to have this office headed by a three member panel, with one member chosen by the Speaker, one member chosen by the Minority Leader and the third member chosen by the other two panel members. In this case, the panel members should be individuals of distinction with experience as judges, ethics officials or in law enforcement. Panel members should have term appointments and be subject to removal only for cause by joint agreement of the Speaker and Minority Leader. The concerns raised earlier about using former Members certainly apply in the single administrator model. However, in the context of a multi-member panel, having one former Member on the panel may assuage Members' concern without undermining the panel's credibility. In this model, the panel members need not serve full-time but should meet at a minimum on a bimonthly or quarterly basis.

The approach taken in H.R. 422 has the added benefit of easily passing constitutional muster. Last year, Stanley Brand, the former General Counsel to the House of Representatives from 1976 to 1984 and who now heads the Brand Law Group, reviewed whether the Constitution prevents the House "from delegating certain responsibilities to an independent body outside the House to investigate ethical conduct of Members and make recommendations regarding punishment for breaches thereof to the full House for disposition." Mr. Brand concludes that:

> Nothing in the text of the Constitution or the jurisprudence interpreting the separation of powers embodied therein offers any basis for asserting that Congress lacks the power to structure its self-disciplinary *(sic)* as it sees fit, including the creation of an outside independent body to investigate ethical breaches and recommend appropriate discipline to the House.

The model contained in the Meehan bill is not that different than the model proposed in 1997 by former House Ethics Committee Chairman, James Hansen (R-UT). At that time, Representative Hansen proposed a House Ethics Council that would conduct investigations. As he stated:

> I offered this proposal after many years of resistance to such a concept, and after much reflection about the institution of the House of Representatives. But after observing the abuse heaped on members of the Standards Committee during the last two years, and after consulting with former members of the Committee, I have reluctantly come to the conclusion that it is time to entrust this important responsibility to persons

> who are not as subject to the partisanship that has torn this House and this Committee asunder.

While the House Ethics Counsel proposed by former Chairman Hansen does not match the Meehan approach exactly, it shares many key characteristics, including the separation of the investigation function and using non-House members. Both also recognize that individuals are not elected to Congress for their investigatory or prosecutorial skills but rather for their views and judgments in making public policy.

The creation of an Office of Public Integrity as proposed by Representative Meehan is also endorsed by the well-respected and thoughtful former Representative Lee Hamilton who also served as Vice Chairman of the 9/11 Commission. In an article entitled, *It's Now or Never for Ethics Reform*, Mr. Hamilton captures persuasively the case for an independent enforcement office:

> I am heartened to see that the notion of an independent Office of Public Integrity, separate from the congressional ethics committees, is at last getting serious consideration by House members and senators on both sides of the aisle.
>
> This is a key reform. The slap-on-the-wrist approach taken by the House ethics committee toward members who knew early on about former Rep. Mark Foley's behavior toward House pages is a classic illustration of how hard it is for Congress to enforce its own ethics code. Even though an independent office could at best make recommendations for enforcement to the ethics committees, its words would carry great weight and ensure that, at a minimum, the American public would have a trustworthy yardstick by which to judge the actions – or inaction – of its representatives.
>
> The truth is it takes two independent forces acting at once to keep congressional ethics on the front burner, both legislatively and in legislators' minds.
>
> One is pressure from the voters, and with 42 percent having reported in exit polls Nov. 7 that corruption and scandals in government were extremely important in how they voted [in November], public pressure is a key influence at the moment.
>
> The other is a clear message from the bipartisan leadership of the House and Senate that this is important, and that they expect and will enforce the highest standards of conduct in Congress.
>
> No doubt there will be attempts in coming weeks to <u>water</u> down whatever reform legislation is proposed, just as the temptation will be strong, once the spotlight has moved on, to let standards slip. But as long as the public

> and the leadership remain determined to see that members of Congress act to reflect credit on the institution and to live up to what the American people expect and deserve, we have a good chance of regaining an institution that makes us proud and maintains our trust.
> (January 11, 2007, Center on Congress, Indiana University. http://centeroncongress.blogspot.com)

## Conclusion

There are those individuals inside and outside of Congress who believe that, with all the problems facing this nation and this Congress, talking about ethics reforms is either a waste of time or simply an exercise in political demagoguery that distracts the public from the "real" issues at hand. Others believe a focus on ethics is simply the misguided obsession of so-called "goo-goos"—good government types who don't live in the real world of rough and tumble politics.

While understandable, these viewpoints miss the critical reason why having strong ethics in our political institutions is not only important to the creation of good public policy but also to the health and vibrancy of our democracy. Those who believe that this focus on ethics is simply an exercise in self-flagellation underestimate the fragility of our democracy and the important role that public credibility and institutional integrity play in fostering a strong democracy.

There are many countries around the world that claim to be democracies but are so in name only. They can point to institutions and processes on the books that look like a democratic system—at least in theory.

What differentiates the United States from other nations whose patina of democratic values is a thin veneer is our shared view as citizens about how democracy is supposed to work and how corruption in government, from the lowest level of dogcatcher to highest level of U.S. President, should not be tolerated. Of course, most Americans are highly skeptical about government, and often with good reason. A certain skepticism about those who are chosen to wield power is both healthy and wise. But there is a commonly held notion that such corruption is wrong and when discovered should be punished.

For those who have lived overseas in countries where democratic traditions are barely nascent or non existent, the quotidian tasks of getting a phone hooked up or obtaining a drivers license often turn into an exercise in frustration and graft. The expectation that every public official is "on the take" leads citizens to feel less compunction about their own cheating. They lose further faith when the systems supposedly designed to hold public officials accountable for their actions are flawed as well. This kind of system rests on cheating, lies, subterfuge and the brutal wielding of state power. It is, in the end, highly unstable.

The stability of our own system of government resides largely in our nation's ability, within the bounds of reasonable skepticism, to assume that most public officials are not crooks—that they are not "on the take." They are human beings—flawed as we all are—who, within their own philosophical framework, will seek to formulate the best public policies for our nation. When that belief in personal and institutional integrity is undermined—when the skepticism turns to anger or even worse, cynicism—it weakens the base of our system of government which, at its healthiest incarnation, depends on the consent of the governed.

Ethics matter because public trust in government and in government officials means far more in a democracy like ours than in nations which rely on the raw exercise of state power to maintain their control of the governing mechanisms.

For those Members of Congress who believe the exercise undertaken by this Task Force is a waste of time or who believe there is nothing that can be done to enhance the public's trust in the institution of Congress, the watchword should be caution. Underlying this attitude is both a hubris and naiveté that underestimates the American people and their ability to recognize when the wool is being pulled over their eyes. There is also a stubbornness to refuse to recognize that in our system elections are won and lost—more importantly, power is won and lost—not only because of the so-called "big" issues, but also because the public wants and expects competence and ethical behavior. Time and again, whether the events are Watergate, Iran Contra, the House bank scandal, or Jack Abramoff and his cohorts our citizens have enough hope, and high enough expectations, in our democratic system that they will "throw the bums out."

Voters, do in fact, care about ethics as the last election demonstrated, according to the polls. And it is the responsibility of Members of this body to uphold the integrity of the institution. The Founding Fathers correctly understood, in including Article I, section 5, clause 2, in the U.S. Constitution, that elections and accountability at the polls alone were not sufficient to protect the integrity of the institution of Congress.

That is why members of this Task Force should not let fear be the main factor in determining your recommendations. Rather than worrying about which political opponent is going to exploit the ethics process to undermine your political career, the question you should be asking instead is "what is the best way to protect the integrity of the institution so that the public will have faith in the caliber of performance and behavior of its Members?"

One last note and that has to do with the intersection of ethics and campaign fundraising. Critics of the new rules enacted at the beginning of the 110$^{th}$ session often point out that the new rules are made to appear ridiculous when campaign fundraising activities are overlaid onto the new rules. After all, a lobbyist cannot take a Member or staffer to lunch but can contribute thousands of dollars to his or her campaign.

So what's the solution? Throw out the ethics rules? Clearly not. Let us instead consider changing campaign finance laws that are compatible with an effective ethics

process. Changing those laws, however, remains a Herculean task. And even if it was achieved through desperately needed comprehensive campaign finance reform, the task would not end. That is not the nature of our system and our society—each is a living, breathing, and evolving entity. Democracy by its nature is a struggle where the means matter as much as the end, and where the act of participation itself is highly valued.

On behalf of the Campaign Legal Center, I urge this Task Force to avoid the temptation to make just cosmetic changes and, under the cover of bipartisanship, allow lowest common denominator agreements to dominate your recommendations. You have an opportunity to act in a way that will give due respect to the People's House about which you care undoubtedly and deeply. I urge you to recommend the establishment of a professional nonpartisan independent office within the legislative branch charged with receiving, reviewing and investigating allegations of ethical improprieties by Members of Congress or their staff, and making recommendations for the disposition of those charges to the House Committee on Standards of Official Conduct.

Thank you again for this opportunity to share our views.

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